

1730 RHODE ISLAND AVE., N. W.
SUITE 810
TELEPHONE (202) 887-0037
TELECOPIER (202) 833-1219

JEREMY KAHN
S. HARRISON KAHN (1933-1980)

KAHN AND KAHN
ATTORNEYS AT LAW
WASHINGTON, D. C. 20036

QA-20654

July 29, 1996

FHWA Docket No. MC-96-18
FHWA, Office of the Chief Counsel
HCC-10, Room 4232
400 Seventh Street, S.W.
Washington, D.C. 20590

FHWA 97-2299-44

Re: Comments on Behalf of Peter Pan Bus Lines, Inc.

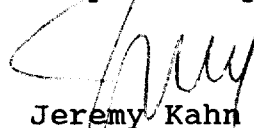
Gentlemen:

There are transmitted herewith the original and one copy of the comments on behalf of Peter Pan Bus Lines, Inc. in connection with the *Federal Register* notice of April 29, 1996, announcing proposed changes in the FHWA Rules of Practice for Motor Carrier Proceedings.

Should you require anything further, your request to the undersigned, counsel for Peter Pan Bus Lines, Inc., shall receive immediate attention.

For your convenience in acknowledging receipt of these comments, there are attached a copy of this communication and a self-addressed, stamped envelope.

Respectfully,



Jeremy Kahn
Counsel for
Peter Pan Bus Lines, Inc.

JK:hs
Enc.
cc: Peter Pan Bus Lines, Inc.

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BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

PROPOSED REVISION TO RULES OF PRACTICE
FOR MOTOR CARRIER PROCEEDINGS

FHWA DOCKET NO. MC-96-18

COMMENTS ON BEHALF OF
PETER PAN BUS LINES, INC.

Peter Pan Bus Lines, Inc. ("Peter Pan"), the nation's largest privately owned bus company and one of the major intercity bus companies in the United States is submitting these comments in response to the *Federal Register* notice of April 29, 1996, announcing proposed changes in the Safety Rules of Practice relating to Motor Carrier Proceedings.

Peter Pan and Motor Carrier Safety

Peter Pan, owned and operated by the third generation of the Picknelly family, is now and for many years has been strongly committed to safety. Peter Pan is keenly committed to safety in operation, since its coaches are always operating with at least dozens and dozens of people on board. Within industry forums, including safety-related forums, Peter Pan is always an active participant. As but one example, Peter Pan's Director of Safety was an active

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participant in the FHWA's program which developed a "Model Curriculum for Training Motor Coach Drivers."

This is just one example of how Peter Pan is committed to safety throughout all aspects of its operation.

Peter Pan is proud of its safety performance, but it knows that while the performance has been "good," it has not always been "perfect." The company is constantly striving to improve safety performance. There have been instances in recent years in which there has been an occasional safety problem, especially during periods of rapid growth. Peter Pan has worked with FHWA safety personnel to correct these isolated problems on the few occasions they did occur.

By objective standards, Peter Pan is an excellent carrier. It has maintained a "satisfactory" safety rating for many years. Safety and excellent performance have been recognized by the Interstate Commerce Commission authorizing Peter Pan to act as a self-insured carrier, one of only a handful of motor passenger carriers which have been authorized to self-insure.

These preliminary comments are intended to show that Peter Pan is familiar with the existing FHWA safety program; it is committed to safety; and it also has some experience with the safety enforcement procedures which are being revised in this proceeding.

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Peter Pan's Comments in General

As Peter Pan understands them, the proposed revisions are quite lengthy and detailed. Peter Pan wants to comment on a few items which it believes are of most importance, recognizing that industry groups will likely be commenting in greater depth on other proposed changes.

Peter Pan applauds FHWA for what it sees as several aspects of the revision which place increasing emphasis upon a carrier's overall safety performance, rather than the results of a single review of records at a particular facility.

In the "background" portion of the FHWA notice (at page 18870), FHWA suggests that it will rely more and more heavily upon information from all safety sources - including state inspections and roadside inspections - to identify through actual safety performance those carriers which have an overall high level of safety compliance, so that these carriers can avoid repeated inspections, and FHWA can focus its limited resources on those carriers which have more obvious problems.

Also, FHWA reaffirms its commitment to provide incentives to those carriers that demonstrate excellent safety performance and compliance. Peter Pan believes this

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is an appropriate goal to pursue. Carriers with good records should be rewarded.

Peter Pan is somewhat concerned that both the existing rules and proposed rules are geared toward finding all carriers the same when guilty of violations of the safety regulations, rather than recognizing that some carriers are "guilty" of perhaps widespread violations while others may be "guilty" of non-compliance with one specific regulation only, while otherwise in substantial compliance. These distinctions need to be made. Each case should be looked at on its particular facts and circumstances.

As one other example of an area where additional consideration is important, Peter Pan points to the "civil penalty assessment factors" in §364.202 (page 18896) and in particular the "history of prior offenses." This factor is too often viewed in absolute terms rather than in context. A carrier as large as Peter Pan which has been in business for more than 60 years necessarily has a safety history. Its history reflects a high level of compliance with a few, isolated violations. In considering the history of violations, there should be a time limit beyond which FHWA should not go. Only those violations somehow relevant to the violations at issue should be considered, and the history

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should be considered in the overall context of safety compliance over the years.

Self-Insurance Authorization

In terms of "incentives" for excellent safety performance, Peter Pan views its self-insurance authorization in part as a "reward" for its excellent experience. Peter Pan is concerned that as an unintended consequence of the new regulations, its self-insurance status might be jeopardized.

As Peter Pan understands it, under the current self-insurance regulations at 49 CFR §1043.5(a)(3), a motor carrier must present evidence of a "satisfactory" DOT safety rating in order to be considered for self-insurance. If a motor carrier loses its "satisfactory" rating, its self-insurance authority is "automatically" revoked.

As Peter Pan understands the FHWA proposal, it would completely eliminate all but the "unsatisfactory" safety rating. That could well terminate Peter Pan's self-insurance authorization unless §1043 is modified, since Peter Pan would no longer have the necessary "satisfactory" rating.

Peter Pan raises this issue, because maintaining self-insurance authorization is very, very important. It would appear that the change in rules was not intended to affect self-insurance, but this may be an unintended consequence of the proposed changes.

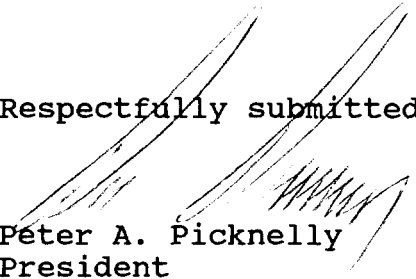
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Conclusion

The transportation industry is changing. Many of the rules which applied to the transportation industry in years gone by no longer seem to apply today. Peter Pan applauds FHWA for attempting to update and modernize its safety rules, particularly to the extent they seem to focus on paying greater concern to carriers with demonstrated problems and more limited concern (and only to demonstrated problem areas) for those carriers with a good safety program in place.

Peter Pan is prepared to provide FHWA with such additional information as it might require as it revises the safety rules.

Respectfully submitted,


Peter A. Picknelly
President
Peter Pan Bus Lines, Inc.

July 17, 1996

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